

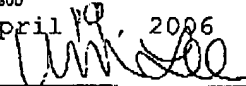
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APR 19 2006

Serial No.: 09/705,579

Patent Docket P1053R1D1

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of Brian M. Fendly Serial No.: 09/705,579 Filed: November 2, 2000 For: ANTI-ErbB2 ANTIBODIES	Group Art Unit: 1643 Examiner: Christopher Yaen Confirmation No. 5667 Customer No. 09157  Certificate of Facsimile Transmission Under 37 CFR § 1.8 In accordance with CFR § 1.8 (d), this correspondence addressed to Commissioner for Patents, P.O. Box 1450 Alexandria, VA 22313-1450 is being transmitted to facsimile No. (571) 273-6300 April 19, 2006  Wendy M. Lee
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Petition under 37 CFR 1.182 Requesting Withdrawal of a  
Recorded Terminal Disclaimer

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

This petition is being filed in order to request withdrawal of a previously filed and recorded terminal disclaimer (TD) in the above application. Here are the facts surrounding recordal of that TD and this request for withdrawal thereof.

1. On March 1, 2004 a terminal disclaimer to obviate an obviousness-type double patenting rejection over a prior patent, namely US Patent No. 5,720,954 to Hudziak et al., was filed in the above-identified application.

2. Applicants explained in the accompanying amendment that the TD was being filed in order to expedite prosecution and without acquiescing in the rejection (see Amendment dated 03/01/2004, page 6).

3. Subsequent to filing the TD, the Office has relied on US Patent No.

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5,720,954 to Hudziak et al. in combination with a secondary reference, Pauwels et al., in rejecting the claims of the above application under 35 USC Section 103. See, Office Action dated 06/15/2005.

4. Applicants have provided evidence of unexpected results to support the non-obviousness of the claims and rebut the Section 103 rejection based on US Patent No. 5,720,954 to Hudziak et al. See Response to Final Office Action dated 12/16/2005, including "Exhibit A" attached thereto.

5. The Patent Office has indicated that the evidence does "indicate synergistic effects of the anti-HER2 antibody in combination with vinorelbine for the treatment of breast cancer." (see Advisory Action dated 02/09/2006, page 2).

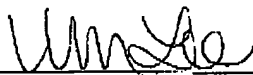
6. Such evidence of nonobviousness likewise rebuts the obviousness-type double patenting rejection based on US Patent No. 5,720,954 to Hudziak et al., previously raised.

7. Hence, Applicants submit that a TD over US Patent No. 5,720,954 to Hudziak et al. is not required in view of the evidence of unexpected results. Therefore, Applicants request, by way of this petition, that the recorded TD filed 03/01/2004 be withdrawn.

The U.S. Patent and Trademark Office is hereby authorized to charge Deposit Account No. 07-0630 in the amount of \$400.00 to cover the cost of this Petition under 37 CFR §1.17(f). Any deficiency or overpayment should be charged or credited to this deposit account. A duplicate of this sheet is enclosed.

Respectfully submitted,  
GENENTECH, INC.

Date: April 19, 2006

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